

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Creation of a Low)	MM Docket No. 99-25
Power Radio Service)	
)	

**SECOND ORDER ON RECONSIDERATION AND
FURTHER NOTICE OF PROPOSED RULEMAKING**

COMMENTS OF: MICHAEL R. BIRDSILL.

In the above captioned Proceeding, the Federal Communications Commission ("FCC") addresses a number of fundamental issues concerning the Low Power FM Service ("LPFM"). These COMMENTS will offer my thoughts on several of these items, and hopefully will assist the FCC to make changes to the LPFM Rules that will improve and promote this valuable service to the listening Public.

Transfer of Control and Assignment of Licenses:

The Rule Prohibiting the Transfer of Control or Assignment of LPFM Construction Permits/Licenses is unduly restrictive and hinders, rather than promotes, the growth of the LPFM Service. The LPFM Rules should be brought into line with the corresponding Rules for other Broadcast Services.

To Wit, no restrictions other than the proposed Permittee/Licensee meet the LPFM eligibility criteria to be an LPFM Permittee/Licensee, which would include non-stock companies. Full Power NCE FM Stations are transferable via both

Assignment of Permit/License and changes to the Governing Boards, and there is no observable negative effect on that Broadcast Service.

The FCC Notice also seeks COMMENTS on the process by which Transfer of Control or Assignment of Permit/License would be effectuated. I propose that the FCC revive FCC Form 313 for these purposes. Form 313 was utilized in the recent past to Authorize Broadcast Auxiliary Stations. FCC Form 601 has replaced Form 313.

FORM 313 could be designated to be used for both the Transfer of Control or Assignment of an LPFM Permit/License, similar to the present use of FCC Form 345 to Transfer Control or Assignment of FM Translator Permits/Licenses. I do propose that **FORM 313** would be a streamlined Form, with no requirement to file copies of any Contracts. Furthermore, the Form would provide for certifications that the Entity gaining Control or Assignment of the LPFM Permit/License is eligible to be an LPFM Permittee/Licensee. Once the Form is Filed, that Filing would trigger a Public Notice with a 30-Day Window for Petitions to Deny the Transfer/Assignment. If no Petition to Deny is received, the FCC would Grant the Transfer/Assignment, and the Parties involved would notify the FCC when the Transfer/Assignment is consummated.

FORM 313-GB could be designated to be used when there is a change in the Governing Board of an entity that is the Permittee/Licensee of an LPFM Station, with no restrictions as to the percentage of change, i.e. the change could result in a complete New Board replacing the Old Board. This would be similar to filing an FCC Form 316 for other Broadcast Stations. The FCC would require

filing a **FORM 313-GB** within 30 days of a change in the Governing Board, and the Form would include the names and address of the New Board Members.

Ownership and Eligibility Limitations.

Local Ownership restrictions should be maintained, with a Modification that an LPFM entity must be based within **25 miles of the proposed LPFM Transmitter Site**, rather than 10 Miles, as currently required. This will give more flexibility to LPFM Licensees with regard to the make up of their Board Members or location of their Offices/Studios. Along with the Local Ownership restrictions, I propose that no LPFM entity should be allowed to own more than **3 LPFM Stations**. However, I also propose that FCC Rule Section 73.855 (a) be deleted, thereby allowing a Local LPFM entity to operate up to 3 LPFM 's with no restrictions as to the co-location of the LPFM Transmitter sites---- this would provide the opportunity to achieve economies of scale, i.e. Diplexing 2 LPFM Stations into a single Broadband LPFM Antenna from a single Leased Tower location. I also propose that LPFM Stations have the right to License 2 FM Translators per LPFM Station. All of these proposals would enhance and promote the goals of the LPFM service. These proposals would also serve to insure that the Transfer of Control or Assignment of Permit/License of an LPFM Station would happen only between qualified "Local" entities, as opposed to National or Regional Groups of LPFM Licensees.

Time Sharing and Renewal Expectancy.

Renewal expectancy to the Licensees of viable time-share arrangements is necessary must, if the LPFM service is to continue to serve Local Audiences

without interruption. However, the ability to freely Transfer Control or Assign Permits/Licenses within a group of time-share Permittees/Licensees may thin out the ranks of these types of shared LPFM Authorizations.

Length of Time for Construction Permits.

There is no evidence that an LPFM Station is any “easier” to construct than any other Broadcast Station, therefore the Construction Period should be increased from 18 months to 36 months, like the other Broadcast services.

Amendment of Section 73.871.

I believe the FCC did not go far enough to provide flexibility for LPFM Stations with regard to moving the Transmitter site through a Minor Amendment/Modification. I propose that the FCC adopt an 11.2 kilometer (km) radius for a Minor Amendment/Modification of an LP-100 Transmitter site. This maximum distance of 2X the service radius for an LP-100 Station is consistent with Section 74.1233 (a), which governs Minor changes for FM Translator sites. Under this FM Translator Rule a Minor site change is defined as one that “continues to provide 1 mV/m service to some portion of it’s previously Authorized 1 mV/m service area.” Theoretically, a move in a straight line of 2x the service area of an LP-100 Station—11.2 km—would still provide 1 mV/m service to a location that previously received 1 mV/m service from the former LP-100 Transmitter site.

Interference Protection from FM Translators and LPFM Stations displacing FM Translators.

LPFM Stations should have Primary Status with respect to FM Translator Stations, if the LPFM service—with its Local Programming requirements—is to survive and flourish. Therefore, FM Translator Applications must protect LPFM Stations from Interference. Adopting required mileage separations of FM Translators to LPFM Stations would be the most straightforward approach.

LPFM Stations should not be allowed to displace FM Translator Stations, which are located within 250 miles from the **originating Primary FM Station**. Otherwise, an LPFM Station (with Local Programming) should be able to displace any FM Translator—especially the “satellator” Translator Stations, as they are a **POX** on the Broadcast Landscape.

Protection from subsequently Authorized Full Service FM Stations.

LPFM Stations should be permitted to continue to operate even when Interference is predicted to occur within the 70 dbu Contour of an “encroaching” 2nd or 3rd Adjacent Channel Full Service Station. However, I also propose that LP-100 Stations be given “Primary Status” after operating for 2 years. (A Primary Status similar to Granting Class A Status to Low Power Television Stations.) Therefore, once an LP-100 Station achieved “Primary Status”, Full Service Stations would have to protect the LPFM Station from prohibited Interference. Additionally, an LP-100 Station eligible for Primary Status should have the opportunity to upgrade its coverage by becoming an LP-250 Station (250 Watts, 40 Meters HAAT), an LP-1000 Station (1000 Watts, 50 Meters HAAT), or a Class A FM Station (6000 Watts, 100 meters HAAT) through a One Step, Minor Change Application. This of course assumes that the up-graded LP-100 Station

can locate a suitable Transmitter site that meets the appropriate mileage separations from any relevant FM Stations, and continues to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area.

Respectfully submitted,

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DATE: _____